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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/780,813

02/17/2004

Joseph Florian

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04/03/2008

INTEGRITY IP
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EXAMINER

LEACH, CRYSTAL I

ART UNIT

PAPER NUMBER

3737

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/780,813	Applicant(s) FLORIAN, JOSEPH	
	Examiner CRYSTAL I. LEACH	Art Unit 3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/17/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The Information Disclosure Statements (IDS) submitted on February 17, 2004 are in compliance with 37 CFR 1.97 and 1.98. The references therein have been considered.

Specification

2. The use of the trademark --POLAR-- has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Objections

3. Claim 19 is objected to because of the following informalities: On the first and second lines of claim 19, the single quotation marks need to be removed. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 15 recites the limitation "the watch face" in line 5. There is insufficient antecedent basis for this limitation in the claim. A watch is not claimed in any of the preceding claims.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryars et al. (5,807,267) in view of Cerwin (5,984,874).

Bryars et al. teach an optical coupling element and a method for in-vivo optical monitoring, wherein the optical coupling element comprises entrance and exit apertures (307A)/(307B) and (313), a photodetector (619), light emitting diodes (618), a lens (621), optical filters (514A)/(514B), (814), (1005) which would be capable of redirecting light beams, a wristwatch (see fig. 1 and 2) comprising the integral elements, a microprocessor (516), (816), (916), (1001) and (1010) capable of operating the wristwatch unit and processing the received signals in order to extract noise, a LCD display on the face of the watch which is capable of producing and displaying a hologram (see fig. 11). The filter is also capable of selectively removing or extinguishing light from an optical path. The light emitting diode functions as an illumination source and is capable of transmitting a beam of light to a tissue region of interest. Bryars et al. teach capabilities of detecting and receiving modulated light signals (see col. 8, l. 7-14). The device taught by Bryars is capable of processing an electrical impulse in order to determine a pulse rate (see col. 7, l. 4 – col. 8, l. 47).

Furthermore, it would be obvious to one of ordinary skill in the art that since the device emits light, receives light, detects and processes the received light signal, the device has entrance and exit apertures capable of performing the desired function. Bryars et al. do not explicitly teach the dimensions of the apertures. However, it would be obvious to one of ordinary skill in the art that the dimensions of the apertures may be altered or modified as desired by the user and it would be obvious to one of ordinary skill in the art that the device of Bryars et al. is capable of performing the function required by an entrance and exit aperture and is therefore a functional equivalent. Bryars et al. teach an opaque region () and a computer configured to run software for carrying out the method of detecting and processing signals (see col. 9, l. 8-62). See also fig. 1-10 and 12 and col. 3, l. 38 - col. 6, l. 28; col. 10, l. 50 – col. 12, l. 15.

Bryars et al. do not explicitly teach a waveguide, mirror or grating.

Cerwin teaches a reflective coating (see col. 4, l. 50-51) which is capable of performing the function of the mirror. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute a reflective coating for a mirror in order to achieve the same or similar predictable result of light reflection. Cerwin also teaches an optical waveguide (44) capable of controlling the transmission of light and angle of incidence, grating (see col. 4, l. 50-52), which is capable of controlling illumination. Cerwin also teaches a waveguide of a pie-wedge shape (see col. 4, l. 39-50). See also col. 6, l. 41-60.

It would have been obvious to one of ordinary skill in the art at the time of the invention to include a waveguide in the invention of Bryars et al., in light of the teachings

of Cerwin, in order to enhance the utility of the device and improve light transmission control capabilities.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Goodman et al. (4,830,014) teach a sensor having cutaneous conformance; Conlan (5,197,489) teaches an activity monitoring apparatus with configurable filters; and Palti et al. (6,811,535) teach a device for monitoring a vital sign.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CRYSTAL I. LEACH whose telephone number is (571)272-5211. The examiner can normally be reached on Monday through Friday, 8 am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian L Casler/
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CIL
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